IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 289

PUBLIC SERVICE TELEVISION, INC., *Petitioner*

v.

FEDERAL COMMUNICATIONS COMMISSION, WKAT, INC., EASTERN AIR LINES, INC., NORTH DADE VIDEO, INC., ELZEY ROBERTS, and L. B. WILSON, INC., *Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

BRIEF IN REPLY TO BRIEF IN OPPOSITION TO MOTION FOR DAMAGES FOR DELAY

ROBERT A. MARMET
EDWIN R. SCHNEIDER, JR.
Attorneys for L. B. Wilson, Inc.
1820 Jefferson Place
Washington 6, D. C.

September 29, 1961

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 289

PUBLIC SERVICE TELEVISION, INC., *Petitioner*

v.

FEDERAL COMMUNICATIONS COMMISSION, WKAT, INC., EASTERN AIR LINES, INC., NORTH DADE VIDEO, INC., ELZEY ROBERTS, and L. B. WILSON, INC., *Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

---

BRIEF IN REPLY TO BRIEF IN OPPOSITION TO MOTION FOR DAMAGES FOR DELAY

L. B. Wilson, Inc. respondent in this case, files this reply to the petitioner's opposition to its mts motion for damages for delay.

1. It is helpful to review the provisions of Rule 56.4 to clarify the issues raised by the me motion for

damages. The rule simply states that (1) "Where a petition for writ of certiorari has been filed" and (2) "there appears to be no ground for granting such a writ", then this Court (3) "may in appropriate cases, adjudge to the respondent reasonable damages for his delay."

2. A petition for writ of certiorari has been filed in this case. Petitioner does not dispute the fact that the respondent has been severely damaged. Thus, the only questions remaining are whether there is any ground for granting the writ and whether this is an appropriate case to adjudge damages to the respondent. As noted in paragraphs 6 and 7 of the motion for damages, the respondent recognizes that this Court will determine whether there is any ground for granting the writ when it passes upon the petition for the writ. With reference to the question of whether this is an "appropriate" case to assess damages, the motion contains substantial, uncontradicted factual allegations regarding the severe damage to L. B. Wilson, Inc. and the handsome profits which the petitioner has reaped as the fruit of its misconduct.

3. Petitioner cannot escape responsibility for the damages it has inflicted upon L. B. Wilson, Inc. by claiming that the filing of the petition did not cause delay. Since the decision was rendered by the Court below on July 6, 1961, every delay in implementing that decision has been based upon the petitioner's assertions that a petition would be or had been filed with this Court. The filing of the petition having been the basis of every action petitioner has taken to stay the July 6 decision, it is difficult to understand petitioner's assertion that the filing is unrelated to the delay.

4. Respondent L. B. Wilson, Inc. has recognized that the question of whether there is any ground for granting the writ is before the Court at this time. As is shown in the brief in opposition to the petition for a writ, it is unquestionably proper for the Federal Communications Commission to deny an award to an applicant who sought to obtain that award by corrupt tampering with the adjudicatory process. Considering the petitioner's proven misconduct, it would appear that this is a most "appropriate" case for the award of damages.

Respectfully submitted,

ROBERT A. MARMET
EDWIN R. SCHNEIDER, JR.
Attorneys for L. B. Wilson, Inc.
1820 Jefferson Place
Washington 6, D. C.

September 29, 1961